



## *Partial Achievements of Central-State Public Policies Against Violence Against Women in Post-Authoritarian Spain (1975–1995)*

Celia Valiente

### THE ROLE OF STREET-LEVEL BUREAUCRATS IN THE IMPLEMENTATION OF PUBLIC POLICIES<sup>1</sup>

In the last two decades central-state policies against violence against women (AVAW policies in what follows) have been similar in Spain to in other European Union member states. Such measures have mainly been of four types: legal reforms, in order to declare violent actions against women unlawful acts which are punishable; diffusion of information about women's rights among the population; promotion of research about the phenomenon of violence against women and elaboration of statistics; and social services for victims of violence, for instance, refuges for battered women. Nevertheless, AVAW policies have been formulated and implemented with some delay in Spain in comparison with other Western countries. This delay was due in part to the fact that since the mid-1930s to 1975 Spain was governed by a right-wing authoritarian regime, which was notably anti-feminist.

In Spain, as in many other industrial countries, AVAW policies have reached in the last two decades only partial achievements, mainly

because of problems of implementation. This chapter argues that this implementation deficit can be partially explained cross-nationally by the characteristics of this policy area. The implementation of most AVAW policies is the responsibility of a high number of street-level bureaucrats: judges, prosecutors, police, staff in hospitals, forensic surgeons (*médicos forenses*), and social workers, to name just a few. All of these bureaucrats treat directly with 'clients' (whether the alleged perpetrators of violence or their victims). These bureaucrats can easily jeopardize the implementation of most AVAW policies due to the fact that they have a high degree of discretion and autonomy to perform their jobs, and are not subjected to strict supervision by the people who occupy higher positions in the organizations for which they work.

The first section of this chapter describes the main AVAW policies in Spain. The second section contains a description of the peculiarities of this policy area, which in all countries have hindered to variable degrees the implementation of most AVAW policies. The final section focuses on the role played by different social and political actors (chiefly feminists, state feminists,<sup>2</sup> and state officials) in the policy-making process in Spain since 1975.<sup>3</sup>

### POLICIES AGAINST VIOLENCE AGAINST WOMEN IN SPAIN<sup>4</sup>

A broad definition of the phenomenon of violence against women 'includes any act of verbal or physical force, coercion or life-threatening deprivation, directed at an individual woman or girl that causes physical or psychological harm, humiliation or arbitrary deprivation of liberty and that perpetuates female subordination' (Heise *et al.* 1994, p. 1165). Nevertheless, for reasons of economy of space, time and research resources, this chapter focuses on the study of policies directed at the following violent behaviour against adult women: rape and any other form of sexual attack, and domestic violence, that is, violence perpetrated in the family sphere. Other violent behaviour, such as forced prostitution, sexual harassment at work, genital mutilation and abuse of female children are not considered in this chapter.

As noted, the main AVAW policies in Spain are chiefly of four types: (i) legal reforms, (ii) actions to diffuse information about women's rights among the population, (iii) promotion of research about the phenomenon of violence against women and elaboration of statistics; (iv) social services for female victims of violence.

With regard to legal reforms, they are the most important AVAW policies in Spain. In the penal code (*Código Penal*), the different violent acts perpetrated against women are defined as either misdemeanours

(*faltas*) or offences (*delitos*), and each of them is assigned a punishment (*pena*), which is lower for misdemeanours than for offences. From 1975 to 1989, sexual attacks against women were still listed as before under the title 'offences against purity' (*delitos contra la honestidad*). Specifically, most sexual attacks against adult women different from rape were still called 'indecent abuses' (*abusos deshonestos*). This terminology was not an anecdote but a very telling aspect of the legal definition of such attacks, because it reflected the fact that when it was formulated, it was considered that perpetrators committed them against the purity, decency or chastity of women, and not against women's freedom to decide whether to engage or not in sexual relations.<sup>5</sup> Besides, rape was defined in a very restricted way, because it referred only to heterosexual vaginal coitus, and not to anal or oral coitus, and because it was established that only men could rape women. Furthermore, in all cases of sexual attacks against women (including rape), if the victim 'forgave' the perpetrator, no prosecution could take place.

It is important to note that divorce was established in Spain in 1981 (Act Number 30 of July 7).<sup>6</sup> This meant that if the executor of violent acts against a woman was her husband, she could not until 1981 obtain a divorce, remaining therefore legally married (although perhaps separated) to the violent husband. A relevant reform of the penal code took place in 1983 (organic<sup>7</sup> Act Number 8 of June 25), which established that even when victims of rape (not of other types of sexual attacks) forgave the perpetrators, they should still be punished according to the law.

It should be noted that until 1985 abortion was a crime in Spain in all circumstances, penalized in most cases with a period of imprisonment which ranged from six months to six years, plus the prohibition on health professionals against performing their professions in private and public centres. Therefore, if a woman had been raped and became pregnant, according to the penal code, she had to give birth to the baby. Organic Act Number 9 of July 5 1985, however, allows abortion in three circumstances: when the woman has been raped, when pregnancy seriously endangers the life of the mother, and when the fetus has malformations.

The most important reform of the penal code regarding violence against women took place in 1989 (organic Act Number 3 of June 21), which instituted changes that had already taken place in other countries. Sexual attacks were no longer called 'offences against purity' but 'offences against sexual freedom' (*delitos contra la libertad sexual*). By the same token, some sexual attacks different from rape were

no longer called indecent abuses but sexual aggression (*agresiones sexuales*). Besides this, the concept of rape was expanded to include not only vaginal, but also anal and oral coitus. Nevertheless, penetration with the penis is required in order to legally define an assault as rape. Two consequences follow immediately from this requirement: a sexual assault with penetration of foreign objects is not considered a rape; and men can rape women and men, but women can only rape men (Bustos 1991, p. 115; Cabo 1993, p. 261). Rape, like homicide, is punished in Spain with a period of imprisonment which ranges from twelve to twenty years, and sexual aggression with a period of imprisonment which ranges from six months to twelve years. In both cases the perpetrator has to compensate the victim financially, although this sum of money is only very rarely paid to the victim (Rodríguez *et al.* 1988, p. 151). Another point should also be remembered: rape and other sexual aggression are offences defined in the laws independently from the marital or professional status of victims, for instance, irrespectively of whether the perpetrator is the husband of the victim, or whether she works as a prostitute (Bustos 1991, p. 115). Finally, the 'forgiveness' of the victims of any offence against sexual freedom (and not only in the case of rape, as established in 1983), did not cancel the punishment for such behaviour.

The 1989 reformed Article 425 of the Penal Code classified repeated physical domestic violence against women perpetrated by husbands or cohabiting partners as an offence, and not as a misdemeanour, as it had been legally defined in the past. 'Repeated' (*habitual*) here means violence which has been perpetrated at least three times (Bustos 1991, p. 65; Cabo 1993, p. 229). The offence of repeated physical domestic violence is punished with a period of imprisonment which ranges from one to six months.

Finally, since the 1989 reform, state officials (for instance, prison guards) who take advantage of the power and influence over their clients that their jobs confer, to ask for sexual favours of their clients or their relatives, are punished more severely than before (López 1992, pp. 317–23).

In relation to the diffusion of information about women's rights, such diffusion is important because only when women are aware of their legal rights — among them, that nobody has the prerogative to treat them violently — can women efficiently defend themselves against assaults. It is also useful that women know which social services and other resources are available for them in case of being victims of violence. In this regard, the main state feminist institution of the central state, the Institute of the Woman (*Instituto de la Mujer*) —

hereafter IW — created in 1983, has set up and administered women's rights information centres (*centros de información de los derechos de la mujer*) in some cities, where citizens can obtain information about women's rights, through an enquiry made in person, by phone or by mail.<sup>8</sup> As well, a free-of-charge women's rights information phone line was set up in 1991, with the main purpose of reaching women who do not live in cities. In addition to these general information services, the IW has organized several information campaigns related to the specific issue of violence against women (Gutiérrez, 1990, p. 125; Threlfall 1985, p. 63).

With respect to the promotion of research about the phenomenon of violence against women, it should be highlighted that up to 1983, when the IW was set up, very little research on women's issues existed in Spain, when compared with other Western countries. The IW has since published books and periodicals, given grants to researchers, awarded books and articles, commissioned pieces of research, and established a documentation centre in Madrid to provide bibliographies and information to all citizens. A significant part of these research activities focuses on the phenomenon of violence against women (*Instituto de la Mujer* 1985, p. 29).

A paramount dimension of research activities has been the collection of statistics of reported cases of violent attacks on women, statistics which, for instance, in the case of domestic violence, hardly existed in Spain until 1983. Feminists (and femocrats since the creation of the IW) have urged the police and civil guard — police who work chiefly in rural areas — to collect data of reported cases of aggression in which victims have been women (Gutiérrez 1990, p. 129). However, it is necessary to bear in mind that the Spanish statistics on this issue, as is the case with the statistics of many other countries, only deal with reported cases.<sup>9</sup> In Spain, as in many other countries (Kornblit 1994, p. 1181), underreporting is a common phenomenon, in such a way that estimations about the real number of cases are only tentative. Nevertheless, the judiciary was urged to collect data about court decisions (*sentencias*) regarding cases of violence against women (Gutiérrez 1989, p. 9), and the same happened with the personnel who work in social services, such as refuges for battered women (Spanish Senate 1989, pp. 12185–7). It should be noted that these statistics are in many cases incomplete and hardly comparable (Rodríguez *et al.* 1988, pp. 35–7).

Finally, as for social services for female victims of violence, these have been set up later and are currently less comprehensive in Spain than in other countries, as happens with social services in general.

The state does not always provide directly all these social services for victims of violence, but in many cases it subsidizes non-governmental non-profit women's organizations which provide them. The best known social services of this type are battered women's refuges (*casas de acogida de mujeres maltratadas*) (*Instituto de la Mujer* 1986, p. 22; Scanlon 1990, p. 99). The first refuges were set up in 1984, and in 1993, fifty-one refuges existed in Spain (*Instituto de la Mujer* 1994, p. 99).<sup>10</sup> As in other countries, these refuges are mainly temporary safe accommodation for female victims of violence and their children. In addition, women receive there other services which range from legal advice to psychological support and vocational training, with the aim of helping them to initiate a new type of life away from perpetrators of violence. Finally, it should be stressed that in Spain, in contrast with certain other countries, there are very few programmes for male perpetrators of violence against women: only some treatment in prisons for rapists and executors of sexual aggression, and hardly any for batterers.

#### DISTINCTIVE FEATURES OF POLICY-MAKING IN THE POLICY AREA OF MEASURES AGAINST VIOLENCE AGAINST WOMEN

Jane Caputi (1992, pp. 204–5), among other authors, has conceptualized violent acts against women as a necessary means to the maintenance of patriarchy (the dominance of women by men which exists in all societies). From this premise, it can be deduced that violence against women will be a permanent characteristic in our societies, which would have to be transformed radically in order to eradicate it. It can also be deduced that currently, AVAW policies are mainly inefficient because they do not substantially undermine the source of the phenomenon of violence against women: male domination. Amy R. Elman and Maud L. Eduards (1991, p. 420), while examining the assistance that battered women receive in Sweden, conclude that such assistance is basically insufficient, although not negligible, chiefly because in the policy-making process in the area of gender equality, 'progress in women's conditions is defined exclusively in terms of gainful employment and shared parenthood rather than in terms of sexuality.' This definition of the improvement of women's status systematically deflects policy-makers' attention away from the phenomenon of violence against women. In contrast with the propositions of Caputi, Elman and Eduards, this chapter claims that in most Western countries AVAW policies have been difficult to formulate and implement not because of the presumed necessity of violence as a means to maintain patriarchal domination, or because of the definition of the betterment of women's lives formulated by policy-makers, but

partly due to the peculiar characteristics of this policy area. These singular features refer to problem definition and policy formulation, but especially to policy implementation.

With regard to problem definition, it is a crucial stage in the policy-making process because for a policy to exist, a situation must be conceptualized as a 'problem', about which state officials are willing to do something. In all countries, it has been very hard for feminists, state feminists and state officials to define violent behaviour against women as a social problem, because they had to counter-argue against those (among the general population and the political elite) who believed that no one could be seriously speaking about a problem which affects the whole society but rather about isolated episodes of violence committed by deviant or mentally disturbed men who live at the margins of society. Furthermore, these problem 'definers' had to break the assumption that violent acts against women pertain to the sphere of individual privacy, a realm where the state must refrain from intervening (Connors 1989, p. 49). Finally, they also had to disclaim the argument that violence is a normal — if regrettable — means to solve disputes and disagreements among people, that is, an ordinary component in human relations, and subsequently, that violent actions against women are not truly a problem but 'things of life'.

In relation to policy formulation, one of the most important difficulties has been the high number of policy actors involved at this stage of the policy-making process. This obstacle can be clarified with the example of the several measures which deal with rape victims. As shown above, legal reforms have been passed in Spain by parliamentarians in order to expand the definition of rape to include not only vaginal, but also anal and oral intercourse, and also to permit rape victims who become pregnant to have an abortion. Nevertheless, policy formulation does not finish with the works of parliamentarians since rape victims need to be examined and treated by health professionals as soon as possible. Therefore, the Ministry of Health should give instructions to personnel employed in health centres to perform such tasks correctly. The Ministry of Health also has to organize the provision of abortions in health centres, and some social services such as therapy or psychological support have to be set up to help rape victims overcome such experiences and reconstitute their lives. As has been said, most of the provider organizations are non-governmental, non-profit associations, which receive some financial help from the state. Therefore, some state units, such as the Ministry of Social Affairs or the IW, have to formulate a policy of subsidizing social movements. If many executives are involved, concerted action among

them is required in order to formulate a coherent set of measures. But such concerted action is difficult to establish since each political executive has its own priorities which might not coincide with the priorities of the other state units. Moreover, generally speaking, the different state units (for instance, Ministries), are not used to working closely with each other but loosely, or worse, independently.

However, if difficulties exist with regard to the definition of the problem and policy formulation, the chief obstacles for establishing most AVAW policies appear at the implementation level. This feature has been pointed out by other scholars. For example, Jill Radford (1992, p. 255), while examining the treatment of domestic killing by the legal system in England, claims that 'discretion dominates every stage of the process — from the decision to act on reports in the first place to the appropriate punishment for the crime at the final stages.' The Spanish case confirms Radford's proposition, since the main problem at the implementation stage (which frequently has been an insurmountable obstacle) has been the enormous number of 'street-level bureaucrats' who held disparate views on the same problem. Street-level bureaucrats are state officials who interact directly with citizens and 'have considerable discretion in determining the nature, amount, and quality of benefits and sanctions provided by their agencies' (Lipsky 1980, p. 3). As Michael Lipsky has clearly explained, several reasons account for this high degree of discretion, for example, that these bureaucrats are professionals, in the sense that they are expected to use their own knowledge and *savoir-faire* to solve problems, which are quite complex and not easily remedied by the implementation of routinized procedures. In addition, the population expect from such bureaucrats not only impartiality but also flexibility and responsiveness to unique circumstances. Furthermore, the number of rules which in theory street-level bureaucrats have to follow is almost infinite and these change constantly. No wonder, then that such state officials adhere only to the most basic rules and exercise discretion in the remaining aspects of their work, without being *de facto* closely supervised by anybody above them. Moreover, street-level bureaucrats' priorities can be different from the goals of the high-rank managers of the institutions and agencies for which they are working. As a result, although the basic guidelines of any policy are set up by legislators, or by policy-makers and high-level bureaucrats, street-level bureaucrats can actually modify and distort such basic guidelines in accordance with their own priorities and views. Finally, civil service provisions, originally established to guarantee non-arbitrary hiring and promotion, actually confer a high degree of autonomy on civil servants, since it

is very costly for their superiors to fire them or to reduce their rank (Lipsky 1980, pp. 13–24).

The numerous street-level bureaucrats involved in most AVAW policies can easily obstruct the implementation process, since they enjoy a high degree of discretion. It is important to remember that in Spain the main AVAW policies have been legal reforms, precisely the measures in whose implementation the highest number of executives involved. An example might be useful to illustrate this point. In Spain, repeated domestic violence against women committed by their husbands or cohabiting partners is defined by the penal code since 1989 as an offence, and is punishable accordingly. For this law to be in fact applied, the police and civil guards have to know it, and be willing to receive and adequately handle the complaints. Moreover, personnel who work in health centres and/or forensic surgeons have to be prepared to examine the victims rapidly. If both health centre personnel and/or forensic surgeons perform their tasks with delay, injuries might be partially or totally healed, and the victims of violence might be deprived of some of the most important incriminating evidence. In addition, it could be the case that victims of domestic violence have to leave the family domicile, where violent acts are repeatedly committed against them, and can therefore be repeated in the near future. If victims do not have enough economic resources to afford other accommodation, and have no relatives who can lodge them, they might have to go to a refuge, if vacancies exist. In some cases refuges are full, and their personnel (or social workers who work for state agencies) have to decide rapidly which potential clients are to be given preference, and which others have to be dismissed (or sent to other social services which provide accommodation to their clients). As for the legal system, judges and prosecutors first investigate the cases, and then convoke a trial where the alleged perpetrator of violence is judged. Judges and prosecutors have to know the special characteristics of the offence of repeated domestic violence, among other things, that it normally takes place in the domicile, without witnesses except the victims (or their children), and that proofs (injuries in most cases) might have already disappeared. Due to these and other characteristics of domestic assaults, judges and prosecutors have to be guided by the purpose of trying harder than in other (easier) cases to elucidate cases of domestic violence in order to punish the offenders. The coordination of the performance of all these and any others involved is required in order to effectively apply the 1989 legal reform in its explicit goal of protecting victims of domestic violence. Such coordination is difficult to attain for multiple reasons, some of which are illustrated in the following section, which

examines the role played by different social and political agents in the policy-making process related to AVAW measures in Spain since 1975.

#### SOCIAL AND POLITICAL AGENTS IN THE POLICY AREA OF MEASURES AGAINST VIOLENCE AGAINST WOMEN IN SPAIN SINCE 1975

Generally speaking, in Spain the issue of violence against women had not been a priority for activists in the women's movement up to the late 1970s or early 1980s, when certain feminists 'discovered' the problem of violence against women in some cases accidentally (Threlfall 1985, pp. 62–3). For instance, feminists from the Separated and Divorced Women's Association (*Asociación de Mujeres Separadas y Divorciadas*) who provided counselling and legal advice to women who wanted to initiate separation and/or divorce proceedings, found that the main purpose of many of their clients was to escape from a situation of high levels of domestic violence. By the same token, some activists who worked in health centres as physicians or psychologists were shocked by the high number of female victims of violence who turn to these centres for help. Such professionals started to suspect that the number of victims (from all social and economic backgrounds) who did not ask for help, due to their lack of awareness of their rights, or simply their fear of being more violently treated by their aggressors if they dared to report their cases, was very high.

The next step taken by feminists was to 'open the eyes' of state officials and of the population in general, in order to develop zero tolerance towards violence against women. Women's advocates also posed demands to policy-makers to intervene in this area, organizing services for the relief and help of the victims, and reforming the legal system in order to effectively protect women against aggressors. It should be borne in mind that in those years only very few statistics existed which counted the number of violent assaults on women (none which were reliable existed in the case of domestic violence). Therefore, it was extremely hard for feminists to argue convincingly before policy-makers that violence against women was a serious social problem (in many cases, a life-or-death matter for victims) which deserved state attention and solutions.

One of the first means used by feminists to call attention to the magnitude of the phenomenon of violence against women and to demand the first state measures was the organization of sporadic but highly visible mass mobilizations against sexual attacks against women, mobilizations which also dated from the late 1970s and early

1980s. Demonstrations generally happened after violent assaults against female citizens (generally rapes) had taken place in a city or town. These first mass mobilizations were organized not only by feminists or members of other social movements (such as neighbours' associations — *asociaciones de vecinos*), but also by political parties and trades unions. Not only the organizers participated in these demonstrations, but also many other people who were not normally very active politically, but who felt concerned about the violence perpetrated on women who lived in their towns or cities.

In 1982, a group of women who provided direct assistance to victims of violence constituted the Commission to Investigate the Ill-Treatment of Women (*Comisión para la Investigación de los Malos Tratos a las Mujeres*). This commission was composed mainly of social workers, psychologists and lawyers and they started to pressurize policy-makers with regard to the formulation of more AVAW measures, and to the implementation of those which already existed. For instance, they requested the Ministry of the Interior (*Ministerio del Interior*), on which the police and the civil guard depended, to remind police agents of their obligation to receive complaints of all cases of violent acts against women and to report them to the judicial institutions. Members of this commission also urged this Ministry to order agents to prepare statistics (Gutiérrez 1990, p. 124; Threlfall 1985, p. 62).

Activists in the women's movement rapidly found an important ally in state feminists. Since its establishment, one of the IW's priorities has been the issue of violence against women (Gutiérrez, 1990, p. 124).<sup>11</sup> Approximately 10–15 per cent of the IW's budget has been devoted to subsidize women's organizations. The emblematic services provided by feminists to female victims of violence — refuges — have been financed with the subsidies of the IW (and of other state units). The times of feminist activism based exclusively on goodwill, altruism and absolute lack of financial resources were over; high-cost services such as refuges could be instituted partly because of the existence of subsidies.<sup>12</sup> In addition, the IW, like the majority of state feminist institutions in the Western world, has neither the competence nor the budget to formulate and implement most gender equality policies, but does have the explicit task of trying to convince other state units to set themselves such policies.

Feminist organizations which 'specialized' in the issue of violence against women were created mainly since the mid-1980s, including the Association of Assistance to Raped Women (*Asociación de Asistencia*

*a Mujeres Violadas*) or the Anti-Aggression Commission (*Comisión Anti-Agresiones*), but also others. In the mid-1980s then, two actors (state feminists and feminists) were already in motion defining the different dimensions of the problem of violence against women and pressurizing policy-makers to do something (or many things) to deal with such issues. They were not the only ones in the years to come. For instance, on November 5, 1986 a unit (*ponencia del Senado de investigación de malos tratos a mujeres*) of the Senate liaison with the Ombudsman and human rights committee (*Comisión de relaciones con el Defensor del Pueblo y de los derechos humanos del Senado*) was formed with the aim of collecting information about domestic violence against women in Spain, analyzing it and giving advice to the Ministries of Interior, Justice and Education about potential measures to be taken (Gutiérrez, 1990, p. 124). The unit was headed by a female senator from the social-democratic party (*Partido Socialista Obrero Español*, PSOE), and its other members were two male PSOE senators, one male senator from the conservative party (*Partido Popular*), and one male senator from the mixed group (*Grupo Mixto*). The unit finished its works in Spring 1989. Its analyses and recommendations were very similar to those elaborated by many feminist groups and femocrats (Spanish Senate 1989).

The concerted efforts of feminists and femocrats have been in the origins of the formulation of many AVAW policies described in the first section of the chapter. Nevertheless, state feminists and members of the women's movement found with dismay that, if it was hard to formulate AVAW measures (for instance, legal reforms), the implementation of them was not at all automatic. In fact, feminists and femocrats discovered that pressure had to be exercised constantly on state officials for programmes to become more than rhetorical declarations. In 1995 the IW can show a positive record in having implicated other state units in the formulation of equality policies (AVAW measures, among them), which would probably not have been set up in the absence of the IW. In contrast, the IW has hardly intervened in the implementation of such policies, mainly due to the lack of personnel and material resources. As a consequence, feminists have been those who have insistently put pressure on street-level bureaucrats for programmes to be adequately implemented (or just put in practice). In the following paragraphs I describe the three main professional groups on which feminists have concentrated their lobbying efforts: the police and civil guard; personnel of health centers; and members of the judicial system. Needless to say, the prominence of these groups with regard to the implementation of



AVAW policies is not specific to the Spanish case. On the contrary, this is a common phenomenon in many other Western countries.

With regard to the police and civil guard, an increasing number of agents have performed their duties impeccably while dealing with female victims of violence, but others have not. In fact, feminists have continuously complained about the insufficient protection given by the police and civil guard on some occasions to female victims especially in the case of domestic violence. Sometimes they have come too late when called precisely because violent acts being perpetrated were against women (Cova and Arozena 1985, p. 36). Moreover, they have not given proper protection to women who have been repeatedly victims of violent attacks. Some of these women have finally died or become severely injured.

Feminists have also denounced the fact that, especially in the case of domestic violence, when women have gone to report violent attacks against them, the police and civil guards have sometimes tried hard to convince victims not to sign a complaint 'in their own benefit', and have acted as mediators in an effort to reconcile the two partners. In other cases these agents have not informed female victims that they had the right to be attended by police-women or female civil guards if they have been victims of violent assaults. Finally, when female victims of violence are prostitutes, police and civil guards have not always performed their duties as diligently as in the case of other women.

Activists in the women's movement have thought that one of the reasons to explain the lack of professionalism and low interest with which some police agents and civil guards can treat cases of violent assaults of women (especially if they are committed in the domestic sphere), lies in the fact that a significant number of them still think that they should not be involved in such cases, because they belong to the sphere of the privacy of the individual, where the state should not intervene, or should intervene but has no adequate means to do it. Other agents simply do not believe the account given by some women while reporting episodes of domestic violence, and still others think that some women 'have asked for it'. Without denying the centrality of these sort of convictions, it is necessary to emphasize that police and civil guards can easily translate attitudes of indifference towards the phenomenon of violence against women into inaction or omission, since they are street-level bureaucrats with a high degree of discretion. In fact, Lipsky (1980, p. 13) identifies the police as one of the emblematic examples of such bureaucrats, who daily 'decide who to arrest and whose behaviour to overlook'.

To overcome attitudes of indifference and weak performance of some police and civil guards, feminists have pressurized those authorities on which the police and civil guard depend to supervise their subordinates in order to make agents more active in matters of violent attacks against women. For instance, in part as a result of such pressures, several circulars have been sent to police stations explaining the laws regarding the punishment of violent acts against women, ordering the police to be diligent in the performance of their duties in this matter and to collect statistics of reported cases (*Ministerio del Interior and Instituto de la Mujer* 1991, p. 110). In addition, since 1988 a police station dedicated exclusively to cases of violence against women, staffed only by policewomen, exists in Barcelona. In other cities, units specialized in such cases, where some policewomen work, but which are not police stations but departments within them, have also been set up. Furthermore, since the mid-1980s, courses and seminars about violence against women have been delivered to the police and civil guard (Gutiérrez 1990, p. 129; *Instituto de la Mujer* 1986, pp. 15–16). Nowadays then, after more than a decade of feminists' mobilizations, some female victims of violence have been attended in stations by policewomen (or by policemen knowledgeable about the issue), some victims have been truly protected from their aggressors, and some statistics have been collected. Nevertheless, these cases are still not the absolute majority. Therefore, there is still a lot to be done with regard to the police and civil guard in this policy area.

In relation to personnel in health services, feminists have insistently denounced these street-level bureaucrats for not always examining the victims of violence as soon as they had to. Moreover, such examinations have not always been as exhaustive as they are supposed to be (Gutiérrez 1989, pp. 26–7). In addition, the privacy and intimacy of the victim has not always been sufficiently protected while being examined. Feminists and femocrats have then pressurized the appropriate authorities to order such professionals to be more diligent in their assistance to the victims. As a result, some professionals are currently more responsive to the needs of female victims of violence, but again, they are not the majority. As it has been noted (Heise *et al.* 1994, p. 1172), people who work in the health system are crucial, because 'as one of the few institutions that see women throughout their lives, the health sector is particularly well placed to identify and refer victims to available services'.

The third area of feminists' concern related to the implementation of AVAW policies has been the functioning of the judiciary. In fact, some have identified it as the biggest obstacle for the successful implementation

of measures against perpetrators of violent attacks against women (Gutiérrez 1989, pp. 42–3; Threlfall 1985, p. 61). Women's advocates have insistently complained about the slowness and superficiality which has characterized the examination of victims by some forensic surgeons (*Asociación Española de Mujeres Separadas y Divorciadas* 1985, p. 23; Gutiérrez 1989, pp. 25–6). In addition, feminists have objected about the relevant number of complaints of violent attacks against women (especially in the case of domestic violence) which are classified by judges of the lower courts as misdemeanours instead of offences, and have therefore been punished accordingly in the subsequent trial.

Feminists have also denounced several practices that regularly occur in trials, practices which hinder the explicit aim of the laws of effectively protecting the victims and punishing the perpetrators of violence. First of all, as it has been explained by Allison and Wrightsman (1993, pp. 171–94) for rape trials in the USA context, and by Sue Lees (1992) for murder trials in Great Britain, on many occasions a trial of violent acts against women becomes a trial of the victims. They frequently have to answer questions related to their style of living or to their past sexual activities, under the suspicion that some women (for instance, those who go out alone at night, or who frequent bars, or who do not have a permanent domicile or a stable partner, or wear certain types of clothes, or are conceptualized as promiscuous) put themselves in danger of being treated violently, since they might indirectly induce men to behave in such a way. Feminists have demanded with vehemence that judges, prosecutors and lawyers do not investigate the private life of the victims unless it is strictly necessary, since what is to be judged in a trial of this type is the violent behaviour of the presumed perpetrator, and not the intimate life of the victim (*Instituto de la Mujer* 1985, pp. 71–2). A decision of the Supreme Court of Justice (*Tribunal Supremo*), that is, the highest judicial unit in all matters except those related to constitutional guarantees, in 1990, corroborated feminists' arguments, declaring that the sexual life of a victim of rape before rape takes place is irrelevant in the trial (*El País*, November 5 1990, p. 29). Nevertheless, even now some judges, prosecutors and lawyers make investigations about the previous sexual life of the victim, investigations which are not at all necessary for the elucidation of the cases.

The feminist movement has also complained that in cases of insufficient proof, prosecutors very often are not active enough in the investigation of violent acts against women before the trial takes place, and do not subsequently maintain charges against presumed perpetrators of violence (Baiges 1985, p. 11; Cova and Arozena 1985,

p. 36). This alleged deficit in maintaining charges by prosecutors is very important, because when judges write court decisions they punish perpetrators of violence with a punishment equal or lower than the punishment demanded by prosecutors.

Another battlefield of feminists' struggles has been the investigation during the trial of the reactions of female victims of violence, especially in cases of rape. The penal code does not say anything about this matter, but in Spain, as in many other countries, it has been a widespread requirement in trials that rape victims prove that they had very actively resisted their aggressors. This *de facto* requirement is paradoxical, since victims of other offences or misdemeanours, for instance, robbery, did not have to prove that they had resisted the thieves. After numerous decisions by the Supreme Court of Justice which made reference to the high degree of resistance of rape victims, the Supreme Court of Justice affirmed in a decision of 1987 that rape victims do not have to prove that they have 'heroically' resisted rapists, and that it was enough to show that they have been intimidated or threatened, for instance, with a knife (*El País*, October 8 1987, p. 29). While the matter seemed theoretically to have been set, feminists have complained that in many trials victims are still asked to prove that their degree of resistance to rapists was high. As a consequence of this and the investigation of the degree of the resistance, victims have had to answer humiliating and embarrassing questions. For instance, in 1989, in a rape trial, the presumed victim was asked if the day of the rape she wore underpants. According to the president of the court, the question was necessary in order to calibrate how the alleged rapist had acted (and the victim resisted), taking in mind that he had a knife in one hand, and with the other he had to take some clothes off the victim, a task which would have been harder or easier depending on her resistance (*El País*, June 27 1989, p. 24; June 28 1989, p. 31).

Finally, the unfairness of several punishments given to perpetrators of violent attacks on women committed in the domestic sphere has been denounced, especially economic sanctions and house arrest (*arresto domiciliario*) (Baiges 1985, p. 10). With respect to economic sanctions, it should be borne in mind that the most common marital property regime in Spain is community property (*gananciales*). Under this regime each spouse is the owner of half of common properties, that is, of all properties and income obtained by any of the two spouses since they marry. When in this situation a violent husband has a fine imposed on him, he normally pays it with common properties, half of which belong to his wife. Therefore, this fine damages the financial position of his spouse, who might have been herself the victim of violence.



With regard to house arrest, it is in many cases a counterproductive punishment for the obvious reason that in the common situation in which the perpetrator and the victim are husband and wife and live together, it is the latter who finally might suffer the consequences of the punishment, since the perpetrator might behave more violently while under house arrest.

Feminists have found several allies in their demands on the judiciary. For example, a minority sector of judges and prosecutors is sensitive to women's demands and has supported them while pressing charges and writing court decisions under criteria that sometimes have gone far in the interpretation of the laws. For instance, in one case the judge considered that a woman had been raped in a case of anal coitus, at a time when, according to the law, rape could only take place in cases of vaginal coitus (*El País*, January 19 1989, p. 32). Feminists and their allies have pressurized policy-makers in high positions to set up guidelines to make the judicial system an efficient mechanism to punish violent attacks. Several superior organs of the judiciary, like the attorney-general of the state (*Fiscal General del Estado*), that is, the supreme organ of the prosecutors, or the Ministry of Justice, have sent circulars asking prosecutors to be more active in the defence of female victims of violent acts and in the investigation of cases, and to collect data (Gutiérrez 1989, pp. 10–13). As a result of these and other efforts, some trials now take place without irregularities, but not all of them. It should be stressed that judges and prosecutors are also street-level bureaucrats with a high degree of autonomy. The former have also been identified by Lipsky (1980, p. 13) as another emblematic example of such bureaucrats, who 'decide who shall receive a suspended sentence and who shall receive maximum punishment'. In fact, the attorney-general of the state can dictate mandatory norms about how prosecutors have to perform their duties. By contrast, judges are independent, meaning by this independence that no state unit exists with capacity to give mandatory instructions to them, and that they write court decisions only in accordance with the constitution and Spanish laws, but not to any other type of instruction (Gutiérrez 1989, pp. 9–11).

#### CONCLUSION

This chapter has described the main policies against violence against women established in Spain after 1975. It has also been argued that if many difficulties arise when AVAW policies are formulated, the stage which is full of (sometimes insurmountable) obstacles is the implementation phase. This is due not to the patriarchal necessity of

violence as a means to maintain the domination of women by men, nor to the definition that in some countries policy-makers (and feminists) make about the betterment of women's conditions (mainly in terms of access to waged labour outside the home, a definition which turns attention away from the phenomenon of violence against women, as several scholars have argued). The difficulties in the implementation stage of AVAW policies arise chiefly because of the high number of street-level bureaucrats involved in the implementation of most AVAW policies, including: judges, prosecutors, lawyers, police, civil guards, forensic surgeons and personnel in health centres, among others. Characteristic of these street-level bureaucrats is direct dealing with 'clients', and the high degree of discretion and autonomy that they have while performing their jobs. Therefore, each of these bureaucrats is in a key position to jeopardize the implementation of any AVAW programme. For a policy to be implemented, the concerted action of all these bureaucrats is necessary. Such concerted action is difficult to organize, because, among other reasons, each has priorities and ways of working, which might probably be different from those of other bureaucrats. In addition, obvious as it might be, since violent acts against women are perpetrated everywhere, the implementation of AVAW policies is a very decentralized process. As a consequence, for a successful implementation in any single village, town or city, all these street-level bureaucrats have to be willing and prepared to assist victims of violence. Furthermore, when so many agents are involved, the question of 'who does what' remains in some cases permanently unsettled. The interviews conducted for the preparation of this chapter show the existence of some disagreements among several agents in this regard, for instance, in some cases, between personnel who work in health centres and forensic surgeons.

Two or three decades ago feminists realized in all countries that women live in a violent world. An increasing number of activists have subsequently thought that effective resistance to the phenomenon of violence against women across countries should involve not only the women's movement but also the state (Heise *et al.* 1994, p. 1174). Nevertheless, the findings of this paper remind us that it is important for feminists to concentrate their pressure on the state not only with regard to the formulation of new AVAW measures but also to the implementation of those which already exist. Besides, due to the high degree of decentralization of the implementation of AVAW policies and the high degree of autonomy of street-level bureaucrats, feminists have to put pressure not only on the superiors of these bureaucrats,

but also on each single bureaucrat of this type. As a consequence, activists in the women's movement accurately sense that they have to fight on numerous fronts, and that battles are fought but never completely won.

If the description of the characteristics and dynamics of this policy area made in this chapter is accurate, it might be concluded that feminists' provision of direct help to the victims of violence is still going to be useful and irreplaceable in the following years. Feminists' direct assistance to victims is sometimes an easier task than the lobbying activities to state units, since such assistance can in some cases be organized by feminists alone, or by feminists and femocrats without resorting to a high number of street-level bureaucrats. This has been in fact the strategy pursued by women's advocates in Spain in the last two decades. It is not only that the supply of direct assistance to victims (and programmes for the population in general) has never been abandoned, but also that such programmes have flourished in the last years.

In the past two decades the main AVAW policies have been legal reforms, characterized by the many difficulties in their implementation, due to the fact that it is precisely in this type of measure where the highest number of street-level bureaucrats are involved, some of whom (for instance, judges) perform their task with the highest degree of autonomy. Nevertheless, generally speaking, obstacles for the implementation of AVAW programmes might be tempered in the near future since it is highly possible that the importance of other AVAW policies different from legal reforms (for instance, social services) will increase. It is also encouraging to bear in mind that the issue of violence against women, together with abortion, are still unifying motives for the different branches of the Spanish feminist movement to engage in joint activities, even though the movement, in relation to other issues, has usually been very fragmented.

### Notes

- 1 I would like to thank Angel J. Sánchez for his help provided in the collection of secondary sources and Roberto Garvia for his priceless comments on an earlier version of this chapter.
- 2 Since the 1960s, institutions with the concrete purpose of promoting gender equality have been set up, developed (and sometimes even dismantled) in most industrial countries. In social science literature such institutions have been called 'state feminist' institutions or bureaucracies. The people who work in them are described as 'femocrats' or 'feminists'.
- 3 This chapter is largely based on an analysis of secondary literature, legislation, published and unpublished political documents and seventeen in-depth personal interviews with members of women's organizations, one judge, one police agent, three civil guards (police agents mainly for the rural areas), one social worker, two members of the personnel who work in a battered women's refuge, one female victim of violence, one forensic surgeon,

one physician specialist in the examination of female victims of violence, and two lawyers specialist in AVAW legal measures, conducted in Madrid in March 1995. In order to maintain the anonymity of the interviewed, their names do not appear in this chapter.

- 4 I will concentrate on the central-state policies considered most relevant, that is, those which affect a large number of women, and/or are financed with a significant amount of public resources, and/or are specially innovative. The description of the programmes made here is by no means exhaustive.
- 5 This type of terminology also enjoyed certain currency in other Roman law countries. For instance, in Italy, sexual violence was listed in the penal code under the title 'crimes against public morality and right living' (Addis 1989, p. 2). In France, sexual assaults were prosecuted according to an article of the penal code which dealt with 'assaults on morals' (Stetson 1987, p. 163).
- 6 Divorce had also existed during the II Republic (1931-6), but it was abolished by the subsequent dictatorship.
- 7 According to article 81 of the 1978 Constitution, an organic Act (*Ley organica*) regulates, among other matters, fundamental rights and public liberties. An absolute majority of the Low Chamber, in a final vote of the whole project is necessary for the approval, modification or derogation of an organic Act. For an ordinary — not organic — Act, only a simple majority is required.
- 8 These information centres were not an original creation of the IW, because the former *Subdirección General de la Mujer* dependent on the Ministry of Culture, had already set up three centres, which the IW inherited. The number of centres increased steadily. Whereas in 1984 there were only three, from 1987 on there are eleven.
- 9 The number of reported rapes has been in Spain: 1,723 in 1989; 1,789 in 1990; 1,936 in 1991; and 1,599 in 1992. The number of reported sexual aggressions has been: 2,502 in 1989; 2,277 in 1990; 2,282 in 1991; and 2,335 in 1992. Finally, the number of reported cases of domestic violence against women has been: 13,705 in 1984; 15,681 in 1986; 15,230 in 1987; 13,644 in 1988; 17,738 in 1989; 15,654 in 1990; 15,462 in 1991; and 15,184 in 1992 (*Instituto de la Mujer*, 1994, pp. 92-3).
- 10 The first battered women's refuge was set up in 1971 in Great Britain (Connors, 1989, p. 34) and in 1974 in the USA (Stout 1992, p. 134).
- 11 The establishment and characteristics of the IW, its effects on policy-making and the relationships between state feminists and activists in the women's movement are described in Valiente (1995).
- 12 The IW's policy of subsidizing the women's movement is described in Valiente (1995).